

REMARKS

Upon careful and complete consideration of the Office Action dated July 1, 2009, Applicant has amended the claims which, when considered in conjunction with the comments herein below, are deemed to place the present application in condition for allowance. Favorable reconsideration of this application, as amended, is respectfully solicited.

Claims 1-13, 16, and 17 have been amended solely for the purpose of clarifying these claims. Claims 14, 15, and 22 remain cancelled while claims 23-31 remain withdrawn without prejudice. No new matter has been entered. Accordingly, claims 1-13 and 16-21 are under consideration.

Claim 1 has been amended, most significantly, by clarifying that the protection apron possesses design features which, when worn by a wearer, constrain the wearer to wear the protection apron in such a manner that the first protective layer is farther away than the second protective layer from a skin layer of the wearer. The application as filed specifies that the protection apron is worn such that the first protective layer is farther away than the second protective layer from a skin layer of the wearer (see, for example, page 14, line 24 to page 15, line 15 of the application as filed). The requirement that the second layer is required to be on the skin side while the first layer is more remote from the skin certainly evidences a requirement that the apron have certain features to ensure that it be worn one way, i.e., only in the way indicated. Therefore, implicit, but compelling support for the foregoing amendment is provided by the application as filed. The features which constrain the protective apron to be worn in only the way indicated are not specified in the application; however, these features are well-known in the art of protective aprons, e.g., as evidenced in U.S. Patent No. 4,766,608 to Cusick et al., as previously submitted to the Examiner in Applicant's previous response of May 18, 2009, the contents of which are incorporated herein by reference.

In the Office Action, the Examiner has rejected all of the claims under consideration (i.e., claims 1-13 and 16-21) under 35 U.S.C. §112, second paragraph, as being allegedly indefinite for not reciting any of the design elements necessary for constraining the apron to be worn in the manner specified (i.e., such that, when worn by the wearer, the first protective layer of the apron is located farther from the wearer than the second protective layer of the apron). The Examiner furthermore states that the specification does not provide any guidance as to any specific and suitable apron design elements in this regard.

However, as discussed above, claim 1 has been amended to specify that the protective apron possesses design features which, when worn by a wearer, constrain the wearer to wear the protection apron in such a manner that the first protective layer is farther away than the second protective layer from a skin layer of the wearer. Applicant has shown above that this amendment is implicitly but compellingly supported by the application as filed. Applicant has also shown above that this amendment is explicitly supported by the general knowledge of the art at the time of the instant invention (e.g., as evidenced in U.S. Patent No. 4,766,608 to Cusick et al.). Cusick et al. is exemplary of the knowledge of the art in this regard, and thus, numerous other design features, as known in the art, may be used.

Therefore, the claims, as amended, do not lack definiteness. Accordingly, Applicant respectfully requests that the indefiniteness rejection of the claims under 35 U.S.C. §112, second paragraph be withdrawn.

The Examiner has also rejected claims 1, 5-13, and 16-21 under 35 U.S.C. §103(a) as allegedly obvious in view of U.S. Patent No. 6,548,570 to Lange (i.e., “Lange”) in combination with U.S. Patent No. 4,795,654 to Teleki (i.e., “Teleki”). Specifically, the Examiner relies on Lange for allegedly teaching all of the compositional features of the protective apron,

while Teleki is relied upon for allegedly teaching the arrangement of multiple layers of different compositions, i.e., wherein a layer more remote from a body being protected comprises predominantly elements having a lower atomic number than elements contained in a layer closer to the body being protected.

In Applicant's responses of May 18, 2009 and December 18, 2008, Applicant argued against the foregoing rejection by maintaining that Teleki teaches an opposite arrangement of protective layers as delineated in the instant claims, i.e., Teleki teaches an arrangement in which the outer protective layer (i.e., one which is first impinged upon by radiation) contains an element of higher atomic number while the inner protective layer (i.e., one closer to or in contact with the wearer) contains an element of lower atomic number (see, for example, col. 3, lines 1-60, and Fig. 1 of Teleki). However, in the instant Office Action, the Examiner asserts that the foregoing argument does not help contrast the claims with Teleki because the apron of Teleki, though specified to be used in an opposite manner as specified by the instant claims, is still allegedly capable of being worn in either of two directions.

In response thereto, Applicant respectfully maintains that Teleki not only does not teach the claimed invention, but teaches away from the claimed invention. The basis for Applicant's assertion is the consistent teaching in Teleki of a protective apron of opposite arrangement to the instant claims, which Applicant contends evidences an implicit requirement therein for the apron described therein to contain features that constrain the protective apron of Teleki to be worn in the manner specified by Teleki. For example, significantly, the issued claims of Teleki are to a shielding structure (not a method) in which it is specified that the layers are positioned such that x-ray and gamma radiation strike only the "first side" first. It would be readily appreciated that, as Teleki is claiming a structure, the structure of Teleki would

inherently include features that constrain a user to wear such a structure such that radiation strikes only the "first side" first. Applicant has already discussed above that such features are well known in the art of protective aprons. The foregoing observation of Teleki strongly militates against the Examiner's assertion that Teleki teaches an apron that could inherently be worn in either of two (opposite) orientations.

Nevertheless, although the above distinction has been made, Applicant observes that on page 8, last paragraph of the Office Action, the Examiner remarks that features upon which the Applicant relies in distinguishing the claim from Teleki (i.e., "design features which constrain a wearer to wear the protective apron in one way") are not recited in the claims. The Examiner also advises that, although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims.

Applicant interprets the Examiner's foregoing remarks to indicate that a possible obstacle in bringing the claims to allowance is an absence in the claims of a recitation of features in the protective apron that constrain the apron to be worn only in the manner specified. In this regard, it is again noted that claim 1 has been amended precisely to include the recitation that the apron contains design features that constrain a wearer to wear the protective apron only in the manner specified by the claim. Support for this amendment has been provided and discussed above.

Accordingly, in view of the clarifying amendments of claim 1, and distinctions made between the claims and Teleki, Applicant respectfully requests that the rejection of the claims under 35 U.S.C. §103(a) over the combination of Lange and Teleki be withdrawn.

The Examiner has also rejected claims 1-4 under 35 U.S.C. §103(a) as allegedly obvious in view of U.S. Application Pub. No. 2004/0262546 to Thiess et al. (i.e., "Thiess et al.")

in combination with Teleki. Specifically, the Examiner relies on Thiess et al. for allegedly teaching the recited compositional features of claims 1-4 while Teleki is relied upon for allegedly teaching the recited arrangement of layers with respect to the wearer. However, Applicant has already shown above that Teleki not only does not teach the instantly claimed arrangement of protective layers, but moreover, teaches away from the claimed arrangement. Furthermore, Thiess et al. do not compensate in any way for the noted deficiencies of Teleki. Accordingly, claims 1-4 are not in any way obvious over the combination of Thiess et al. and Teleki. Applicant therefore respectfully requests that the rejection of claims 1-4 under 35 U.S.C. §103(a) over the combination of Thiess et al. and Teleki be withdrawn.

For all the reasons provided, Applicant considers the claims, as amended, to be patentable. Accordingly, allowance of the pending claims is earnestly requested.

Respectfully submitted,



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